



COMMONS REGISTRATION ACT 1965

Reference No. 206/R/22

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of Land at 'The Gurnick', Tredinneck

DECISION

This reference relates to an objection under the Common Land (Rectification of Registers) Act 1989 to the registration of part of the land registered in Entry No. 3 in the Land Section of Register Unit No. CL.707 in the Register of Common Land maintained by the Cornwall County Council.

It is occasioned by Objection No. 50 made by Mrs P R Barnes and referred to a Commons Commissioner on 28 September 1992.

I held a hearing to inquire into this objection at Penzance on 18 May 1993 and viewed the land shortly afterwards.

At the hearing Mrs Barnes, the objector, was represented by Mr Calderwood, Solicitor, of Messrs. Vivian Thomas and Jervis, and Mr M Wright represented Cornwall County Council the registration authority. The objection was opposed (save as to certain small parcels of land referred to hereafter) by Mr and Mrs M J Williams, the Trustees of the Will of E G Mann deceased, who were represented by Mr James, Solicitor, of Messrs. Boase Bennetts and James. Evidence in support of the objection was given by Mrs Barnes herself, by Miss M Mann and by Mr P M Edwards, a nephew of Mrs Barnes.

The objection land consists of a roughly triangular area, having its apex to the south where the objection land abuts the metalled road at Tredinneck. From the road an unmetalled lane leads slightly uphill towards The Gurnick. On each side of the track the grass has been mown and trees have been planted. Just before one reaches The Gurnick the track divides: the right hand fork (the "east track") runs along the frontage of The Gurnick, uphill to almost the northern extremity of the objection land where it turns left along the northern (top) part of the objection land: the left hand fork (the "west track") which is somewhat wider runs up the south-western side of the objection land and joins the east track at the north-west corner of the objection land, from which it leads on to one of the disused engine houses of the Ding Dong Mine. Both tracks lie some 2' or so below the level of the land which they surround, so in a sense demarcating and enclosing the land.

The Gurnick is coloured red and yellow on the plan annexed hereto: the areas coloured yellow are included in the objection land, but Mr and Mrs Williams did not oppose the objection as regards those areas. I find them to be enclosed grassed areas including certain outbuildings, and I am satisfied as to those areas that the conditions specified in section 1(2) of the 1989 Act are satisfied. In what follows "the objection land" is to be understood as excluding those areas.

The major portion of the objection land was comprised, with other land, in a conveyance dated 24th April 1922 by the 10th Duke of Leeds to Henry Brush, from whom it was purchased in 1924 by Mr and Mrs Edward Mann, from whom it passed by inheritance to Edward Gordon Mann and thence to Mr and Mrs Williams as Trustees of his Will. The remainder of the objection land (an area of .408 acre O.S.374 (part), described as Downs (unenclosed)) was conveyed with other land by a conveyance dated 24th May 1919 by Viscount Clifden to William Gordon Rowe.



According to a letter from the Tithe Redemption Commission dated 5 February 1959, it was then owned by the Executors of W S Edwards deceased. I understand that W S Edwards was Mrs Barnes' father. There is no evidence that this land ("the 1919 land") was acquired by Mr Edward Mann (though the 1919 conveyance was produced by Mr and Mrs Williams): it was, however, included in an Assent dated 16th July 1969 by which Mr Edward Mann's property was transferred to Mr E G Mann, and in the Assent dated 31st December 1990 in favour of Mr and Mrs Williams. The question of title to the 1919 land cannot therefore be regarded as closed, since it may be that the 1919 land was (as the evidence of Miss F Mann suggested) wrongfully claimed by Mr E G Mann, though I cannot make any finding on that question.

Mrs Barnes' objection is based on the claim that the objection land is ancillary to "The Gurnick" i.e. is a garden used and enjoyed with that dwellinghouse.

However, in the cases under the Act - Re 1-4 White Row Cottages, Beverley 1991 Ch.441 and Cresstock Ltd v Commons Commissioner 1992 1 WLR 1009 and Storey v Commons Commissioner (unreported, Vinelott J 22.2.1993), the land claimed to be ancillary to the dwellinghouse had been owned by the same person as the dwellinghouse: in the present case it is clear that the successive owners of The Gurnick have never had a paper title at least to that part of the objection land which is included in the conveyance of 24th April 1922 ("The 1922 land").

I mention this point because stress is laid in those cases on the point that land can be a "garden used and enjoyed with a dwellinghouse" even when no actual use of any kind is proved, simply because the "garden" is "linked" by title to the dwellinghouse. No such link can exist in such a case as the present, at least as regards the 1922 land, and in my opinion what must be proved is actual use and enjoyment of that land as a garden by the occupiers of The Gurnick during the whole of the period laid down by the Act which, it seems to me, must run from 5th August 1945 and be continuous up to the time of the hearing, at which date (under section 1(4)) the Commissioner has to decide whether the statutory requirements, including the requirement that the land has been ancillary to the dwellinghouse "at all times", are satisfied. The Act, however, by permitting an objection to be made by "any person" makes it clear that persons other than the land owner may make the objection, so it is open to Mrs Barnes to make this objection.

Mrs Barnes' evidence was to the following effect. She is in her 90th year, and in about 1912 went to live at "The Gurnick" with her parents. Her father was a stonemason, who also owned some nearby meadows where he kept cows, which were brought down twice a day to The Gurnick to be milked using the eastern track from the top of the objection land down to The Gurnick. Mrs Barnes' father cleared a piece of land opposite The Gurnick (roughly the area I have coloured black on the plan) where he planted trees and flowers including fruit trees, and kept chickens for the benefit of the family (not commercially). Mrs Barnes married in 1930 but continued to live nearby, until in 1949 her father died, when she and her husband moved into The Gurnick with her mother. Mrs Barnes' father had also dug out (in about the position marked A on the plan, and therefore on the edge of the 1919 land) a sunken vegetable plot in which he, and Mr Barnes later, grew potatoes and vegetables. However, they kept no chickens after 1949 (the cows had been sold in about 1944-5), and although Mrs Barnes said that she and her husband always called the objection land "the garden", it seems to me that no significant use was made even of the cleared area since the departure of the chickens. Certainly on my visit the area showed signs of



recent tidying: but such fruit trees as remained appeared moribund, and there were no flower beds and nothing that could be called a lawn; furthermore there was no demarcation between the cleared area and the impenetrable scrub and undergrowth which covers the bulk of the objection land. Similarly the potato patch had also been recently cleared, but there was no sign of current cultivation. Mrs Barnes told me that her husband had grown potatoes there for family use throughout the 1950s 1960s and 1970s, and said she had had a few potatoes from it last year. Mr Edwards (who is Mrs Barnes' nephew and reversioner to The Gurnick subject to her life tenancy) described the land as neglected and overgrown, though he referred to it as "garden".

Although I consider that there may be some doubt about the title to the 1919 land, Mr and Mrs Williams are registered as the owners of the whole of the objection land, and I therefore must direct myself that this is a case where no link by title exists between the dwellinghouse, and the garden which is alleged to be ancillary to it. In my opinion, in such a case it must be shown that the ancillary land has been occupied and used as a garden at all times since 5th August 1945 and down to the date of the hearing, by the occupiers of the relevant dwellinghouse, and in my view the use made of the two pieces of land which I have endeavoured to describe falls (especially in recent years) well short of that. The remainder of the objection land is, as I have mentioned, impenetrable scrubland of which no use is now, or can ever have been made, and I am therefore not satisfied that the conditions specified in section 1(2) of the Act are satisfied in respect of the land to which this objection relates (except, as I have said, the areas coloured yellow on the plan).

I am required by regulation 22(1) of the Common Land (Rectification of Registers) Regulations 1990 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

27th

day of

May

1993

Commons Commissioner

